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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
SANJAY KUMAR; J., K. VINOD CHANDRAN; J.
Civil Appeal No. 11417 of 2025; February 24, 2026
Omkara Assets Reconstruction Private Limited. *versus* **Amit Chaturvedi and Ors.**

Insolvency and Bankruptcy Code, 2016 – Section 7 vs. Companies Act, 1956 – Sections 391-394 – Overriding effect of IBC – Redundancy of Scheme of Arrangement (SOA) due to gross delay – The Supreme Court held that proceedings under Section 7 of the IBC cannot be stalled on the grounds of "judicial discipline" due to a pending Scheme of Arrangement under the Companies Act, especially when such a scheme has become defunct and inoperative due to a decade-long delay and non-compliance with statutory timelines - Noted that the IBC is a special statute aimed at the revival of companies, and its provisions prevail over inconsistent provisions in other laws by virtue of Section 238.

Companies (Transfer of Pending Proceedings) Rules, 2016 – Rule 3 – Transfer of proceedings to NCLT – Where a "second motion" for a Scheme of Arrangement was pending and not "reserved for orders" at the time the 2016 Rules came into effect (December 15, 2016), the High Court was mandated to transfer the proceedings to the Tribunal - In this case, a second motion filed belatedly in 2009 and left pending for years should have been transferred to the NCLT.

Judicial Discipline vs. Economic Implications – While judicial discipline is a cornerstone of justice, it cannot be used by "tardy litigators" to jeopardize public funds or put the economy in a "hostage situation." - In cases with significant economic implications, the larger national interest of rehabilitating an industry and ensuring financial probity takes pre-eminence – Appeals allowed. *[Relied on A. Navinchandra Steels (P) Ltd. v. Srei Equipment Finance Ltd. (2021) 4 SCC 435; Paras 13-20]*

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For Respondent(s) Ms. Purti Gupta, AOR Ms. Henna George, Adv. Ms. Sunidhi Sah, Adv. Ms. Pooja, Adv. Mr. Ravi Sehgal, Adv. Mr. Ashwani Sharma, Adv. Ms. Roopali Lakhotia, AOR Mr. Adithya S. Nair, Adv. Mr. Ritin Rai, Sr. Adv. Mr. Siddhartha Jha, AOR Mr. Kartik Jha, Adv.

J U D G M E N T

K. VINOD CHANDRAN, J.

1. Judicial impropriety *vis-a-vis* financial rectitude is the moot question arising in this appeal in the context of the proceedings pending under the Companies Act, 1956 and that initiated under the Insolvency and Bankruptcy Code, 2016 (for short, the IBC). The Stressed Assets Stabilization Fund of the bank who financed respondent No.2, approached the Adjudicating Authority under the IBC, the Company Law Tribunal, for initiating Corporate Insolvency Resolution Proceedings (CIRP) for recovery of an amount of Rs.154,33,12,274/- with future interest; on the principal of Rs.10,60,00,000/- disbursed by way of two term loans on 05.04.1999 and 12.12.2000; the default having commenced from 01.01.2003. Respondent No.2 resisted the claim on the grounds of pending proceedings with respect to a Scheme of Arrangement (SOA) under Sections 391 to 394

of the Companies Act before the Punjab and Haryana High Court and alleged suppression of such fact before the Adjudicating Authority.

2. The Tribunal observed that respondent No.2 failed to establish compliance with the provisions of Section 391 of the Companies Act and noticing the contention of the appellant that the SOA had become defunct, invoked the provisions of Section 7 of the IBC based on the decisions of this Court, with reliance placed on Section 238 of the IBC. The consequences, including that of moratorium under Section 14 and the prohibitions thereunder were listed out as directions and an Interim Resolution Professional (IRP) was appointed. Respondent No.1, the erstwhile director of the Corporate Debtor (CD), approached the Company Law Appellate Tribunal which kept in abeyance the application filed before the Adjudicating Authority until disposal of the proceedings pending before the Punjab and Haryana High Court. In the present appeal, this Court issued an interim order reviving the moratorium and permitting the IRP to resume charge of the CD.

3. Mr. Neeraj Kishan Kaul, learned Senior Counsel appearing for the appellant submitted that the proceeding before the High Court is of no consequence, especially looking at the overriding effect of the IBC as provided under Section 238. It is pointed out that under Section 391 there are two motions required before the Company Court, first an application to call for a meeting of the stake holders and then to obtain sanction for the scheme, if it is passed with a majority of three-fourths of the members, present and voting. There is also prescribed a time for moving the second motion and the submission of the order of approval before the Registrar of Companies within the time prescribed, which are statutorily mandated to bring into force the SOA. This was never complied with by respondent No.2, thus making the scheme defunct and unenforceable by reason only of the gross delay. Though consent was initially granted by the creditors for the SOA, the same was not acted upon and even before a second motion was moved, the consent was expressly withdrawn by written communication addressed to respondent No.2. The proceeding before the High Court is now contested independently which would not disable the appellant, whose debts have mounted astronomically from approaching the adjudicating authority under the IBC for initiating a CIRP.

4. We were taken through the decisions of this Court which categorically and unequivocally found the provisions of IBC to have overriding effect as against the inconsistent provisions in any other law for the time being in force. It is also submitted that IBC has been interpreted as a measure, balancing the realization of debts; public funds, to a reasonable extent while ensuring that the industry/ enterprise is not driven to sure death. The SOA under the Companies Act having become defunct by the deliberate omissions of respondent No.2 and the debt having risen astronomically; the existence of which cannot be disputed, it was perfectly proper for the Adjudicating Authority to have initiated the CIRP under the IBC. The Appellate Authority erred in having kept the application under Section 7 in abeyance, thus suspending the moratorium and putting the tottering industry back in the hands of the management which was responsible for its downfall.

5. Ms.Purti Gupta, learned Counsel appearing for the respondent, on the other hand, urged that the order impugned is not liable to be interfered with, especially since it promotes judicial discipline and has not rejected the application under the IBC. The Adjudicating Authority having been informed of the approval of the SOA under the Companies Act ought not to have initiated the CIRP. It is pointed out that the decisions wherein the proceedings under the IBC were allowed to be continued can be distinguished insofar as there was no approved scheme in one of them and in the other, there was a

liquidation proceeding under the Companies Act. When, by consent of the creditors, a SOA has been arrived at under the Companies Act, there is no reason to unseat the management by initiation of CIRP and appointment of an IRP. There is no appeal taken from the stay order of the Division Bench of the High Court is the further compelling contention.

6. Mr.Ritin Rai, learned Senior Counsel appearing for the applicant in I.A. No.54690 of 2026, does not join issue in the appeal and restricts the applicant's claim to that filed before the Resolution Professional to admit the applicant's entire claim, in the event of the proceedings under the IBC being continued with.

7. At the outset we have to notice that though we are not in appeal from the order of the High Court but all the same it has a bearing especially when the impugned order brings to a complete halt, the CIRP. We have to look at the consequences of the proceedings before the High Court being taken to a logical end, to adjudicate upon the initiation of CIRP under the IBC. Section 391 of the Companies Act speaks of a compromise or arrangement between a company and *inter alia* its creditors if a majority of the creditors representing 3/4th value of the debt, agree to such compromise or arrangement in a meeting of such creditors present and voting, either in person or through proxies; which meeting has to be directed by the Court on an application under sub-section (1) by the Company or any creditor. On such meeting being called, held and concluded with the required majority, under sub-section (2) there is a further requirement of sanction by the Court. The proviso also requires that the order of sanction made by the Court under sub-section (2) shall have no effect until a certified copy of the order has been filed with the Registrar.

8. Reference is apposite to The Companies (Court) Rules, 1959 which mandates by Rule 78 that after the meeting of the creditors, the result shall be reported to the Court by the Chairman within 7 days or within such time as directed by the Court. This was done as evidenced from Annexure-1 dated 25.07.2008, the order of the Company Judge, which also permitted the filing of the second motion, which had to be done as per Rule 79 within 7 days therefrom. The sanction obtained from the Judge has to be filed with the Registrar within 14 days from the date of such order under Rule 81 which alone brings into effect the SOA as provided under the Act. The respondent Company's inaction to move the second motion was brought to its notice by Annexure A-2 dated 12.03.2009, requiring the second motion to be filed immediately, failing which withdrawal of consent to the SOA was also threatened. On the continued inaction by Annexure A-3 dated 03.07.2009, after almost a year, the creditors withdrew their consent to the SOA.

9. It was much later, on 23.07.2019 that Annexure A-5 order was passed by the High Court in the second motion said to have been filed by the respondent in the year 2009. The filing of the second motion was also not within the time provided under the Rules. In any event the SOA based on the dues as on 2008, as has been argued by the appellant herein, would have become completely unenforceable in the year 2019. This is especially so when the creditors had initiated proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, SARFAESI Act) and also approached the DRT which had issued a recovery certificate in the original application filed, quantifying the dues and mulcting the liability of *pendente lite* and future interest.

10. The predecessor in interest of the appellant herein, the Stressed Assets Stabilisation Fund of the Industrial Development Bank of India (for short, the IDBI Bank) moved an application for recall of the order of sanction, passed by the Company Judge, which was allowed by Annexure A-6 dated 02.08.2022. The recall order, as we see from

a bare reading, specifically found the inoperability of the SOA which enabled settlement of the total dues of Rs.63.19 crores as on 31.12.2006, while on the sanction being approved in 2019, the total dues were close to Rs.150 crores. It was also noticed that the Company Court had no jurisdiction in the matter by virtue of the coming into force of The Companies (Transfer of Pending Proceedings) Rules, 2016 and Section 434 (1) (c) of the Companies Act, 2013. The recall order further observed that the order sanctioning the scheme failed to notice the reply of one of the creditors opposing the sanction of the scheme and asserting withdrawal of the consent earlier granted. The order of recall passed with sufficient reasoning was stayed by a Division Bench as per Annexure 7 dated 10.10.2022, observing; *albeit* incorrectly, that the creditors with 75% value of the debt had agreed to the scheme.

11. We cannot but observe that the procedural requirements under the Companies Act and the rules were not complied with by the respondent and despite the pendency of the proceedings before the Company Court, we cannot presume that the SOA brought out in the year 2008 is still feasible, operational and remains reasonable considering the lapse of time and the deliberate omissions of the Company, the respondent herein. The statutory timelines have not been complied with and at the risk of repetition, we notice various dates, on the basis of the submission of the learned Counsel appearing for the respondent that as of now the SOA is in force for reason of the filing having been done before the Registrar of Companies in Form No.INC-28.

12. Pertinently the Adjudicating Authority specifically noticed that the furnishing of the order in the second motion was merely pleaded and not established by production of the document before the Adjudicating Authority. Be that as it may, the Resolution at the meeting of creditors which approved the SOA along with the report of the Chairperson was taken on record by the High Court on 25.07.2008. Admittedly, no application by way of a second motion was filed before the High Court within seven days therefrom, as is required under Rule 78. The order sanctioning the SOA by the High Court was on 23.07.2019 in an application filed in the year 2009 by CP No. 89 of 2009, definitely way beyond the prescribed time. There is no plausible explanation offered by the respondent for the delay of almost ten years in moving the Court for sanction of the scheme, the terms of which would have definitely become redundant by mere passage of time. Yet again, it has to be noticed that even the order dated 23.07.2019 prescribed a period of 30 days within which the order had to be filed before the Registrar of Companies, which was also not done. The recall of the order dated 23.07.2019 came about on 11.07.2022, after three years in an application filed by the Stressed Assets Stabilization Fund in the year 2019 numbered as CA 158 of 2019 in CP No. 89 of 2009. In the intervening three years there was no filing done, of the order purportedly sanctioning the SOA, before the Registrar. The recall order was stayed by the Division Bench of the High Court on 10.10.2022 after which also there was no filing within 30 days, which even if filed would have been beyond the time prescribed.

13. Form No. INC-28 now produced before us is seen to have been filed on 06.07.2023. The Form also indicates the due date of filing before the Registrar as 22.08.2019, 30 days from the date of order, which stood recalled and later revived. We cannot find even a pretense of the timelines statutorily prescribed having been complied with. The SOA, the terms of which were as on the year 2008, would have thus become redundant and inoperative as of now or even in 2023 when the filing was done before the Registrar of Companies which makes the SOA for all practical purposes defunct. There would be no reason to stall the IBC proceedings on the ground of judicial discipline, based on the

pending proceedings before the High Court. Relevant is also the fact that in the intervening period, between 2008 and 2019, the creditors had approached the Debt Recovery Tribunal under the Recovery of Debts and Bankruptcy Act, 1993 (the RDB Act) and also invoked the provisions of the SARFAESI Act, both of which were specifically noticed by the Adjudicating Authority. Despite our specific query as to the said proceedings, the answer of the respondent was evasive, of the respondent having contested the same without any specific details furnished to us.

14. In considering the order of sanction dated 23.07.2019 issued by the High Court, we also have to look at the reliance placed by the Company Judge on a Division Bench Decision of that Court in CAPP No. 2 of 2017- *Alpha Corp Development Private Limited* and *Euthoria Developers Private Limited* dated 31.03.2017. Therein a joint application was filed by the two appellants to transfer a mall owned by the 1st appellant to the 2nd appellant, both Companies. The application under Sections 391 and 394 was a composite one seeking dispensation of the requirement of convening a meeting as also publication of notice of the meeting and also praying for treating the very same petition as a second motion for sanction of the SOA. The learned Company Judge who heard the matter reserved it on 25.10.2016 and on 07.12.2016, the Central Government brought out the Companies (Transfer of Pending Proceedings) Rules, 2016 which came into effect on 15.12.2016. Rule 3 required all pending proceedings related to cases other than winding up to be transferred to the Tribunal, but the proviso carved out an exception insofar as those proceedings which are reserved for orders for allowing or otherwise, which proceedings were not required to be transferred. The Division Bench found that since the learned Company Judge had reserved orders on 25.10.2016 in a composite petition, insofar as one of the prayers made with respect to dispensation of meetings was finally allowed; what remained for consideration was only the sanction of the SOA on merits. The Division Bench found no reason to transfer it to the Tribunal since the application filed fell clearly within the exception carved out in the Rules of 2016 and the second proviso to Section 434(1)(c) of the Companies Act, 2013. The Division Bench also proceeded to consider the sanction by themselves rather than sending it back to the Company Judge due to the delay occasioned in the consideration of the SOA.

15. Applying the dictum of the said decision to the present case, herein the meeting was convened, and the Chairperson had filed the report before the High Court which was taken on record on 25.07.2008. There was no second motion filed within the period prescribed under the Companies Rules and a delayed motion was made in the year 2009. Nothing was done thereafter and in 2016 specifically on 15.12.2016, the Rules of 2016 came into effect, requiring the transfer of proceedings to the Tribunal as on that date. The second motion filed belatedly was pending and *'not reserved for allowing or otherwise ordering'.* Even if a second motion had been filed within the time prescribed in the rules, that is within seven days of 25.07.2008 and the matter was kept pending, after the constitution of the Tribunal the matter would have to be transferred. In the present case, admittedly, the application was filed in the year 2009 long after the statutory time prescribed and since the same was not taken up even when the rules of 2016 came into force, it should have been transferred to the Tribunal.

16. We make it clear that the observations are merely *prima facie,* but we find no reason to stall the proceedings for initiation of the CIRP by resorting to the provisions of the IBC, as has been now attempted by the appellant herein, which would ensure rehabilitation of the Company. Judicial discipline, though a corner stone of justice, equity and fairness; ensuring continued public trust in judicial institutions, cannot be urged by tardy litigators

engaged in fractious and opulent litigations aimed at jeopardizing public funds and putting the economy in a hostage situation. In cases having economic implications like the present one, at stake is not only public funds but rehabilitation of an industry, in the larger national interest, wherein financial probity is also of pre-eminence.

17. Learned Counsel for the respondent has sought to distinguish the decision of the Appellate Tribunal, as approved by this Court, in ***Sunil Kumar Sharma v. ICICI Bank Ltd.***[1] (AT)(Ins.) No. 1158-1162 of 2024 on the ground that there the SOA was pending consideration, while in the present case, the SOA is approved. It is relevant that in the cited decision, the Appellate Tribunal held, in the facts of the case, that the SOA was pending from 2018 to 2024, which scheme had neither come into effect nor was the debt bifurcated, for transfer to the Special Purpose Vehicle, taken over by the SPV. In the present case also, we have already noticed that the SOA of 2008 never came into operation and the sanction in the year 2019 was without jurisdiction and after it had become redundant and inoperable for sheer passage of time, the terms of which having not been complied with by the respondent company.

18. ***A. Navinchandra Steels (P) Ltd. v. Srei Equipment Finance Ltd.***[2] was sought to be distinguished on the ground that therein a liquidation proceeding was pending. The learned Judges in the cited decision looked at the earlier decisions on the subject and reiterated that the *"IBC is a special statute dealing with revival of companies that are in the red, winding up only being resorted to in case all attempts of revival fail"* (sic para 16). It was also held that the Companies Act is a general statute with reference to the IBC, which has the status of a special statute; prevailing, in the event of conflict especially by virtue of Section 238 of the IBC. Therein, a secured creditor of the Corporate Debtor had, in enforcement of its debt by mortgage, sold a property, while standing outside the winding-up proceedings of the Company Court. This sale was the subject matter of a proceeding in the High Court, filed by the Provisional Liquidator. Noticing the pendency of the proceedings before the High Court and the sale of the mortgaged property, it was held that if the aforesaid sale is set aside, that particular asset would be resumed to the possession of the Provisional Liquidator and if upheld, there would be other assets of the Corporate Debtor which would continue to be in the hands of the Provisional Liquidator. Therein, the Bombay High Court reckoning the proceedings under the IBC had *suo motu* directed the Provisional Liquidator to handover the record of the assets to the IRP of the CD subjected to the Section 7 proceedings. The plea that Section 7 was merely a subterfuge to avoid moving a transfer application was rejected. Section 7 was held to be an independent proceeding, which stands by itself as reiterated in a catena of judgments of this Court, which had to be tried on its own merits. There was held to be no suppression employed and the discretionary jurisdiction under the fifth proviso to Section 434(1)(c) permitting any party to a winding up proceeding before the High Court, prior to the IBC, to seek for a transfer to the Tribunal, would be inconsequential once the parameters of Section 7 and other provisions of the IBC are met. Here, the reliance is on the second proviso to Section 434(1)(c) which we have already found to be inapplicable.

19. We in fact notice paragraph 25 of ***A. Navinchandra Steels (P) Ltd.***[2] which is extracted herein below (Para 25):

"25. *A conspectus of the aforesaid authorities would show that a petition either under Section 7 or Section 9 IBC is an independent proceeding which is unaffected by windingup proceedings that may be filed qua the same company. Given the object sought to be achieved by the IBC, it is*

[1] 2025 SCC OnLine SC 145
[2] (2021) 4 SCC 435

clear that only where a company in winding up is near corporate death that no transfer of the winding-up proceeding would then take place to NCLT to be tried as a proceeding under the IBC. Short of an irresistible conclusion that corporate death is inevitable, every effort should be made to resuscitate the corporate debtor in the larger public interest, which includes not only the workmen of the corporate debtor, but also its creditors and the goods it produces in the larger interest of the economy of the country. It is, thus, not possible to accede to the argument on behalf of the appellant that given Section 446 of the Companies Act, 1956/Section 279 of the Companies Act, 2013, once a winding-up petition is admitted, the winding-up petition should trump any subsequent attempt at revival of the company through a Section 7 or Section 9 petition filed under the IBC. While it is true that Sections 391 to 393 of the Companies Act, 1956 may, in a given factual circumstance, be availed of to pull the company out of the red, Section 230(1) of the Companies Act, 2013 is instructive and provides as follows:

*"**230. Power to compromise or make arrangements with creditors and members**.—(1) Where a compromise or arrangement is proposed—*

*(a) between a **company** and its creditors or any class of them; or*

*(b) **between** a company and its members or any class of them,*

*the Tribunal may, on the application of the company or of any creditor or member of the company, or in the case of a company which is being wound up, of the liquidator, appointed under this Act or under the Insolvency and Bankruptcy **Code**, 2016, as the case may be, order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal directs.*

Explanation.—For the purposes of this sub-section, arrangement includes a reorganisation of the company's share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods."

What is clear by this Section is that a compromise or arrangement can also be entered into in an IBC proceeding if liquidation is ordered. However, what is of importance is that under the Companies Act, it is only winding up that can be ordered, whereas under the IBC, the primary emphasis is on revival of the corporate debtor through infusion of a new management."

Hence, the consideration of an SOA is not alien to a proceeding under the IBC, which as of now could only be on the debt due *in praesenti*.

20. As observed, when the Rules of 2016 came into force, the second motion filed before the High Court under Sections 391 was pending without any orders passed nor was it reserved for orders which required the proceeding to be transferred to the Tribunal. We say this without prejudice to our *prima facie* finding that the application for second motion was grossly delayed, beyond the time prescribed for filing such an application and hence incompetent. Further as seen from the extract above a compromise or an arrangement under Section 230 of the Companies Act, 2013 can also be entered into in an IBC proceeding at the appropriate stage.

21. We find absolutely no reason to sustain the order of the Appellate Tribunal, and we set aside the same restoring the order of the Company Law Tribunal, the Adjudicating Authority under the IBC. The IRP hence would be entitled to proceed and our interim direction to keep the management in the loop of the day-to-day affairs, stands vacated.

22. The appeal stands allowed.

23. Pending applications, if any, shall also stand disposed of.